

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DARRIUS JACKSON,

Petitioner,

v.

STATE OF DELAWARE,

Respondent.

)
)
)
)
)
)
)
)
)
)
)

C.A. No. N14M-04-067

Submitted: April 13, 2016

Decided: July 19, 2016

**PETITION FOR RETURN OF PROPERTY
Denied.**

Darrius Jackson, *Pro Se* Petitioner

Robert J. O'Neill, Jr., Esquire, Deputy Attorney General, Attorney for Respondent.

PARKER, Commissioner

COMMISSIONER'S ORDER

This is a civil action brought by Petitioner Darrius Jackson pursuant to Superior Court Civil Rule 71.3, seeking the return of \$947 cash which was seized on April 16, 2014. The State filed a petition for forfeiture pursuant to 16 *Del. C.* § 4784. Petitioner sought the return of the money. This case was tried before the Court on March 22, 2016. For the reasons stated herein, Petitioner's request for the return of currency is denied. The currency is hereby ordered forfeited to the State.

I. FINDINGS OF FACT AND LAW

On April 16, 2014, Petitioner Jackson was driving a silver 2004 Volvo automobile erratically in Wilmington, Delaware, when he was stopped by a Wilmington Police Officer. At the time of the vehicle stop, the officer, Captain Brown, smelled burnt marijuana in the vehicle. Petitioner Jackson admittedly was high on marijuana at the time of the stop. Petitioner Jackson was removed from the vehicle. A total of 15.5 grams of marijuana was found. Some of the marijuana was found in Petitioner Jackson's pocket and some was found in the vehicle.

A total of \$947 in cash was seized at the time of the vehicle stop. Two bundles of money were found in Petitioner's pants pockets, including \$700 in cash found in the same pocket as the marijuana. An additional \$222 in cash was found in the other pants pocket. Another \$25 in cash was found under the driver's seat of the vehicle.

The Delaware Forfeiture of Drug Profits Act of 1990 ("the Act") authorizes the State to seize and forfeit personal property which has been used in the perpetration of drug-related crimes.¹ The Delaware General Assembly's aim in passing the Act was to

¹ 16 *Del. C.* § 4784, *et. seq.*

cripple the trafficking and sale of illegal drugs.² The State must show that the money seized is presumed to be forfeitable under the statute.

The forfeiture statute, 16 *Del. C.* § 4784(a)(7), states that money seized is presumed to be forfeitable if: a) it is furnished in exchange for a controlled substance; b) it is found in close proximity to a forfeitable controlled substance; or c) it has trace amounts of controlled substances on the money.

The State bears the initial burden of proof to establish that there was probable cause that the money seized from Petitioner should be forfeited under the statute. Once the State has met its burden showing that the money seized is presumed to be forfeitable, the burden then shifts to Petitioner to rebut this presumption.³

The State has met its burden to show that the money seized is presumed to be forfeitable. 16 *Del. C.* § 4784 provides that all moneys found in close proximity to forfeitable controlled substances⁴ are presumed to be forfeitable. In this case, the money seized was found in close proximity to the forfeitable controlled substance. Indeed, some of the money was found in the same pants pocket as the marijuana.

Where it has been determined that the State has demonstrated probable cause to initiate the forfeiture proceeding, the Petitioner then has the burden to rebut the presumption of forfeiture. The burden upon Petitioner is to prove by a preponderance of evidence that the money forfeited was lawfully obtained and was not associated with the sale of drugs.⁵ Petitioner has not met his burden in this regard.

² *In the Matter of One 1985 Mercedes Benz Automobile*, 644 A.2d 423, 427-8 (Del.Super. 1992).

³ 16 *Del. C.* § 4784(a)(7)(a).

⁴ 16 *Del. C.* § 4784 (a)(7)(a).

⁵ *Mercedes Benz*, 644 A.2d at 429.

On April 17, 2014, the day after Petitioner's \$947 was seized, he filed a petition for the return of the money. In the petition, he claimed that he received the money from his 2013 income tax refund and that he had the money because he intended to use it to pay his \$1000 electric bill.

In Petitioner's answers to the State's interrogatories, he further explained that he received a \$3,500 income tax refund for 2013, and that he was carrying the money because he was going to pay a \$1,000 electric bill.

At the hearing held on March 22, 2016, he changed his pre-hearing story. After it was established that he removed all the money from his ADP/bank account by March 14, 2014, and that as of the time of the seizure, April 17, 2014, he still had not paid his outstanding electric bill, he changed his story and claimed that, in fact, he never intended to pay his outstanding electric bill with the money.

Petitioner testified at the hearing that he worked in 2013, but he had not worked in 2014. He testified that he received a 2013 income tax refund in the amount of \$3,500 and used some of the money to buy a car, the silver 2004 Volvo he was driving at the time of the stop on April 16, 2014. He testified that he paid around \$2000 for the car.

The court directed the Petitioner to provide a copy of documentation associated with the purchase of the vehicle. The documentation provided by Petitioner reveals that the vehicle was purchased on March 17, 2014 for \$3,000 and that there were about \$250 incurred in additional fees associated with the purchase.

Simple math indicates that if Petitioner received an income tax return of \$3500, and spent \$3250 of this money on the purchase of the vehicle, he had used up practically the full amount of the refund on the purchase of the vehicle. As previously stated,

Petitioner had removed all the money from ADP/bank account by March 14, 2014, and he purchased the vehicle on March 17, 2014.

Petitioner also testified that a gram of marijuana cost \$20, and he was found with 15.5 grams at the time of the vehicle stop, suggesting he spent \$310 on the purchase of the marijuana. Adding the purchase of the vehicle, \$3250 and the purchase of the marijuana \$310, there was nothing remaining from the \$3500 he received from the income tax refund. The income tax refund does not account for the \$947 Petitioner had on his person at the time of the seizure.

Petitioner testified that he had not worked at all during 2014, and that he used his income tax refund to also pay for his own groceries, clothes, cell phone bills of \$50 per month, car insurance and other living expenses.

During cross-examination, the State established that Petitioner had, in fact, received a 2013 income tax refund of \$4895, not \$3500 as Petitioner had contended. The State established that Petitioner fraudulently claimed a niece as his daughter on his 2013 income taxes thereby earning an Earned Income Credit. Petitioner admitted that he had no children and that the girl he claimed on his income tax return as his daughter was actually his niece. Petitioner testified that he had given his sister, the girl's mother, money (perhaps as a justification for declaring his niece as his daughter on his income tax return).

Reading between the lines, Petitioner and his sister, the girl's mother, may have worked out an arrangement whereby Petitioner claimed his niece as his daughter because he qualified for the Earned Income Credit (and the girl's mother probably did not) and then they shared the monies received. That may have been why Petitioner claimed in his

answers to interrogatories and on direct examination at the hearing that he received \$3,500 as an income tax refund, rather than the \$4895 actually received.

After the subject vehicle stop and the seizure of the \$947, about two months later, on June 6, 2014, Petitioner was again stopped in his vehicle and found with 16.2 grams of marijuana. At \$20 per gram, Petitioner was found in possession of \$324 worth of marijuana. How did Petitioner, who was not working at the time, have the money to purchase this large quantity of marijuana when he claimed that the State seized all that remained of his income tax return money? Also how did Petitioner support himself after he had depleted all his income tax return money? He had car insurance expenses, gas expenses, food expenses, an overdue electric bill of over \$1,000, owed \$50 per month for his cell phone, and had other living expenses.

Petitioner testified that after the \$947 was seized two months earlier, his mother started giving him money, and he used the money she gave him to purchase the 16.2 grams of marijuana at a cost of \$324.00.

It is Petitioner's burden to prove by a preponderance of the evidence that the money was unlawfully seized or is not subject to forfeiture. At the end of the day, the Court is left with a number of conflicting stories. The Petitioner admits that his original story, having the \$947 on his person and intending to use it to pay his electric bill, was not the truth. Petitioner has not met his burden of proof. Petitioner was unable to provide the court with credible and tangible proof that the money seized was from a lawful source and is not subject to forfeiture.

It is clear by the evidence and testimony presented that the money which was forfeited was in close proximity to the marijuana. The State has met its burden to show

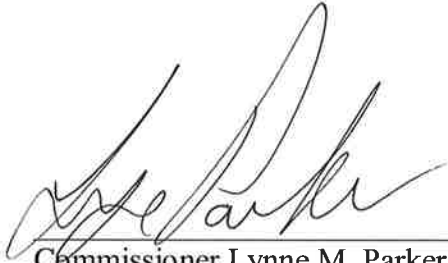
that the money seized is presumed forfeitable. The Petitioner has not met his burden to rebut this presumption and to establish that the money forfeited was gained in a legal manner, rather than through an association with the sale of drugs. The money seized is subject to forfeiture.

The money shall be forfeited.

II. CONCLUSION

For the reasons stated above, the Petition for Forfeiture is granted and the Petition for Return of the Property is denied.

IT IS SO ORDERED.



Commissioner Lynne M. Parker

cc: Prothonotary